

THE KING'S BENCH
WINNIPEG CENTRE

IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, AS AMENDED

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF MANITOBA CLINIC MEDICAL CORPORATION AND THE MANITOBA CLINIC HOLDING CO. LTD.

(the "**Applicants**")

APPLICATION UNDER: THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C., c. C-36, AS AMENDED

NOTICE OF MOTION
(DISTRIBUTION, DISCHARGE, AND OTHER RELIEF)
DATE OF HEARING: MONDAY, APRIL 29, 2024 AT 10:00 A.M.
THE HONOURABLE MR. JUSTICE CHARTIER

McDougall Gauley LLP
500 616 Main Street
Saskatoon SK S7J 0H6

IAN A. SUTHERLAND, K.C. / CRAIG FRITH
PHONE: (306) 665-5417 / (306) 665-5432
FAX: (306) 664-4431
CLIENT FILE NO. 568954.1

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(the "**Applicants**")

APPLICATION UNDER: THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C., c. C-36, AS AMENDED

NOTICE OF MOTION
(DISTRIBUTION, DISCHARGE, AND OTHER RELIEF)

Alvarez & Marsal Canada Inc. (the "**Monitor**"), the court appointed monitor of Manitoba Clinic Medical Corporation ("**Medco**") and The Manitoba Clinic Holding Co. Ltd. ("**Realco**") (collectively, the "**Applicants**"), will make a motion before the Honourable Mr. Justice Chartier on Monday, April 29, 2024 at 10:00 a.m. or so soon after that time as the motion can be heard at the Law Courts, 408 York Avenue at Kennedy Street, in the City of Winnipeg, in Manitoba.

THE MOTION IS FOR:

1. An Order in substantially the form attached hereto as Schedule "A" to this Notice of Motion (the "**Direction to Pay Order**");

- (a) abridging the time for service of this notice of motion and all other materials filed in support of the same such that this motion is properly returnable on April 29, 2024 at 10:00 a.m., and dispensing with further service thereof;
- (b) declaring that:
 - (i) 1439573 B.C. Ltd. (the "**Purchaser**") is in contempt of paragraph 7 of the Order (Enhancing the Monitor's Powers) of the Honourable Justice Chartier dated November 24, 2023 (the "**Enhanced Powers Order**"); or

- (ii) alternatively, the Purchaser has been enriched at Medco's expense without any juristic reason, for failing to deliver the \$757,126.65 of Medco's accounts receivable (the "**Pre-Closing Receivables**") to the Monitor upon the Monitor's request, as detailed in the Eighth Report of the Monitor dated April 22, 2024 (the "**Eighth Report**"); or
 - (iii) in the further alternative, the Purchaser wrongfully interfered with the Pre-Closing Receivables in a manner that is inconsistent with Medco's ownership of the funds, and thereby committed the tort of conversion in relation to the Pre-Closing Receivables;
- (c) directing the Purchaser to pay restitution to Medco (care of the Monitor) in the amount of the Pre-Closing Receivables (plus interest) (the "**Restitution**") forthwith;
 - (d) authorizing and directing the Monitor to distribute the Restitution (and any costs awarded) to CIBC upon receipt;
 - (e) granting each of the Monitor and CIBC the costs of this motion attributable to the Direction to Pay Order on a solicitor-client basis to be paid forthwith by the Purchaser to the Monitor and CIBC; and
 - (f) such further and other relief as counsel may advise and this Honourable Court may permit.
2. An Order in substantially the form attached hereto as Schedule "B" to this Notice of Motion (the "**Termination Order**"):
- (a) abridging the time for service of this notice of motion and all other materials filed in support of the same such that this motion is properly returnable on April 29, 2024 at 10:00 a.m., and dispensing with further service thereof;
 - (b) extending the Stay Period (as defined in the Amended and Restated Initial Order of the Honourable Justice Kroft dated December 1, 2022 (the "**ARIO**")) from May 3, 2024 to the earlier of July 5, 2024 or the filing of a certificate in substantially the same form as that attached to the draft Termination Order (the "**Monitor's Certificate**");
 - (c) discharging, releasing, and terminating the DIP Lender's Charge, the Directors' Charge, and the KERP Charge (as defined in the ARIO);

- (d) authorizing and directing the Monitor to retain a holdback in the amount of \$550,000 (the "**Monitor's Holdback**") from the net proceeds of the Medco and Realco Transactions and other funds realized from the Applicants' estates (collectively, the "**Net Proceeds**") on account of further fees and disbursements of the Monitor and its legal counsel, the Applicants' potential GST liability, and other costs identified in the Eighth Report and apply from time to time the amounts so held against such further fees and disbursements (without the requirement of taxation or passing of accounts) and other costs;
- (e) authorizing and directing the Monitor to distribute \$578,000 from the Net Proceeds and the entirety of any residual amounts left over from the Monitor's Holdback after the payment of the Monitor and its legal counsel's final invoices and the other costs identified in the Eighth Report to Canadian Imperial Bank of Commerce ("**CIBC**");
- (f) approving the Eighth Report and the Monitor's activities, actions, and conduct described therein;
- (g) approving the professional fees and disbursements of the Monitor, the Monitor's legal counsel, and the Applicants' legal counsel, as set out in the Eight Report;
- (h) providing that upon the filing of the Monitor's Certificate:
 - (i) the Administration Charge (as defined in the ARIO) will be discharged, terminated, and released;
 - (ii) the within proceedings shall be terminated;
 - (iii) the Monitor shall be discharged;
 - (iv) the Monitor, McDougall Gauley LLP, Taylor McCaffrey LLP, CIBC, and MLT Aikins LLP, and their respective, directors, officers, shareholders, partners, employees, agents, executors, successors, administrators, and assigns (collectively, the "**Released Parties**") shall be released and discharged from any and all liabilities they now have or may have by reason of, or in any way arising out of, their acts or omissions in relation to these proceedings, save and except for liabilities arising from the Released Parties' gross negligence or willful misconduct; and
 - (v) no action or other proceeding shall be commenced against the Released Parties, except with prior leave of this Court on notice to the applicable Released Parties;

- (i) such further and other relief as counsel may advise and this Honourable Court may permit.

THE GROUNDS FOR THE MOTION ARE:

3. For the purposes of this motion, the Monitor relies on:
 - (a) sections 11 and 11.02(2) of the *Companies' Creditors Arrangement Act* (Canada) (the "*CCAA*"); and
 - (b) Rules 1.04, 3.02(1), 16.04(1), 16.08, and 60.10 of the *King's Bench Rules*.

INTERPRETATION

4. Unless otherwise defined, capitalized terms will have the meanings given to them in the ARIO and Eighth Report.

SERVICE

5. The Monitor's notice of motion, the Eighth Report, and brief of law were served by email and facsimile on the members of the Service List established in these proceedings as contemplated by paragraph 47 of the ARIO.

THE DIRECTION TO PAY ORDER

6. The Medco Transaction closed on December 1, 2023.
7. The Medco assets purchased by the Purchaser did not include Medco's accounts receivable, and the Purchaser did not assume any of Medco's outstanding obligations to its former physicians under their services agreements with Medco.
8. After the date of closing, the Purchaser collected the Pre-Closing Receivables, all of which represented payments from Manitoba Health to Medco for services rendered by

Medco's former physicians to Medco patients prior to the date of closing. The Pre-Closing Receivables are therefore Medco's Property (as defined in paragraph 4 of the ARIO) and subject to the Administration Charge and CIBC's security interest.

9. As detailed in the Eighth Report, the Monitor has, on multiple occasions, requested that the Purchaser deliver the Pre-Closing Receivables to the Monitor. The Purchaser was aware of the Enhanced Powers Order and, specifically, paragraph 7 thereof, but nevertheless refused and continues to refuse to deliver the Pre-Closing Receivables to the Monitor; consequently, the Purchaser is in contempt of paragraph 7 of the Enhanced Powers Order, necessitating the Monitor's motion for the Direction to Pay Order.

10. Further, and in the alternative, if the Purchaser is not ordered to make restitution to Medco for the Pre-Closing Receivables, the Purchaser will have been enriched, and Medco will have suffered a corresponding deprivation, with no juristic reason. The Purchaser had no right to possess or distribute the Pre-Closing Receivables, and therefore cannot avail itself of the *change of position* defence.

11. Further, and in the alternative, the Purchaser has wrongfully interfered with the Pre-Closing Receivables (i.e., Medco's Property) in a manner that is inconsistent with Medco's right of possession, thereby committing the tort of conversion. The Purchaser is strictly liable for having done so.

STAY EXTENSION

12. The Stay Period is scheduled to expire on May 3, 2024. The Monitor is seeking an extension of the Stay Period until the earlier of July 5, 2024 or the filing of the Monitor's Certificate, for the following reasons:

- (a) it will maintain the *status quo* in the proceedings and allow the Monitor to make the final distributions and complete the remaining work required to conclude these proceedings without interference;

- (b) the Monitor anticipates that the length of the proposed extension will provide sufficient time to finalize the administration of the *CCAA* proceedings;
- (c) the Applicants are forecast to have sufficient liquidity to meet their obligations during the requested extension;
- (d) the Monitor is unaware of any creditor that will be materially prejudiced by the proposed extension; and
- (e) the Applicants, under the Monitor's direction, have acted (and continue to act) in good faith and with due diligence.

TERMINATING THE CHARGES

13. All amounts secured by the DIP Lender's Charge and KERP Charge have been paid to the beneficiaries of those charges, and the Monitor has determined that there are no claims against the Applicants' directors and officers for which they may be entitled to seek an indemnity pursuant to the Directors' Charge. Specifically:

- (a) as reported in the Sixth Report, the DIP Lender has been repaid all amounts advanced pursuant to the Commitment Letter;
- (b) the Monitor did not receive notice of any Disputed Claims as of the Claims Bar Date, and the Applicants' directors and officers were accordingly released and discharged from any and all Released Claims pursuant to paragraph 4 of the Order (Directors' and Officers' Release) of the Honourable Justice Chartier dated February 9, 2024; and
- (c) the beneficiary or beneficiaries of the KERP, as the case may be, were paid the amounts to which they are entitled in accordance with the same.

14. Accordingly, these three court-ordered priority charges are no longer necessary.

DISTRIBUTIONS

15. The Monitor:

- (a) has received an independent security opinion confirming the validity and enforceability of CIBC's loan agreement and associated security;
- (b) has made the final distributions to the Medco physicians in accordance with the corporation's year-end accounting;
- (c) is unaware of any claimant other than the beneficiaries of the Administration Charge that might have priority to CIBC in respect of the Net Proceeds; and
- (d) is therefore seeking authorization to distribute the Net Proceeds and Pre-Closing Receivables to CIBC, along with any residual amounts remaining in the Monitor's Holdback after the payment of the Monitor and its legal counsel's final invoices and the other costs identified in the Eighth Report.

TERMINATION OF THE *CCAA* PROCEEDINGS

16. Once the Monitor has made the final distributions and completed any residual administrative work:

- (a) all amounts secured by the Administration Charge will have been paid, making the continuation of the charge unnecessary;
- (b) the Monitor will have discharged its mandate; and
- (c) the Monitor's continued appointment, as well as the *CCAA* proceedings themselves, will no longer serve any purpose.

17. The Monitor is therefore seeking to terminate the Administration Charge, the Monitor's appointment, and the *CCAA* proceedings upon the filing of the Monitor's Certificate in substantially the same form as that appended to the draft Termination Order.

RELEASES

18. The Monitor is of the view that the release of the Released Parties is fair and reasonable in the circumstances for the following reasons:

- (a) the Released Parties each played distinct, but nevertheless critical, roles in the Applicants' restructuring and meaningfully contributed to the same;

- (b) the motion is being made on notice to the Service List and the Eighth Report details the nature and effect of the releases sought;
 - (c) any Person (as defined in the ARIO) who objects to the releases will have the opportunity to oppose the same at the hearing of this matter; and
 - (d) the releases are fair, reasonable, and not overly broad, as they do not release the Released Parties from claims based on gross negligence or willful misconduct.
19. The proposed releases therefore satisfy the criteria established in the case law.

THE FOLLOWING DOCUMENTARY EVIDENCE WILL BE USED AT THE HEARING OF THE MOTION:

1. the Amended and Restated Initial Order signed December 2, 2022 and other Orders of the Court granted in the *CCAA* proceedings;
2. the Affidavit of Keith McConnell sworn November 28, 2022.
3. the Pre-Filing Report of Alvarez & Marsal Canada Inc. dated November 29, 2022.
4. the First Report of the Monitor dated January 20, 2023.
5. the Second Report dated April 18, 2023;
6. the Third Report of the Monitor dated July 31, 2023;
7. the Fourth Report of the Monitor dated September 22, 2023;
8. the Fifth Report of the Monitor dated October 27, 2023;
9. the Sixth Report of the Monitor dated November 24, 2023 and Confidential Supplement thereto;
10. the Seventh Report of the Monitor dated February 6, 2024;
11. the Eighth Report of the Monitor dated April 22, 2024;
12. the Affidavit of Service of Shelby Braun, to be filed;
13. the Monitor's Brief of Law dated April 22, 2024; and

14. such further and other documentation as counsel may advise and this Honourable Court may permit.

April 22, 2024

McDOUGALL GAULEY LLP
500 616 Main Street, Saskatoon SK S7J 0H6
Ian A. Sutherland, K.C. / Craig Frith
PHONE: (306) 665-5417 / (306) 665-5432
FAX: (306) 664-4431

SCHEDULE "A"

File No. CI 22-01-38613

THE KING'S BENCH
WINNIPEG CENTRE

IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, AS AMENDED

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF MANITOBA CLINIC MEDICAL CORPORATION AND THE MANITOBA CLINIC HOLDING CO. LTD.

(the "**Applicants**")

APPLICATION UNDER: THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C., c. C-36, AS AMENDED

ORDER
(CONTEMPT OF COURT AND DIRECTION TO PAY)
DATE OF HEARING: MONDAY, APRIL 29, 2024 AT 10:00 A.M.
THE HONOURABLE MR. JUSTICE CHARTIER

McDougall Gauley LLP
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THE KING'S BENCH
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THE HONOURABLE)
) Monday, the 29th day of April, 2024
MR. JUSTICE CHARTIER)

IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, AS AMENDED

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APPLICATION UNDER: THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C., c. C-36, AS AMENDED

ORDER
(CONTEMPT OF COURT AND DIRECTION TO PAY)

THIS MOTION, made by Alvarez & Marsal Canada Inc. in its capacity as the court-appointed monitor (the "**Monitor**") of Manitoba Clinic Medical Corporation ("**Medco**") and The Manitoba Clinic Holding Co. Ltd. (collectively, the "**Applicants**") for an order: (i) directing 1439573 B.C. Ltd. (the "**Purchaser**") to pay certain pre-closing Medco receivables to the Monitor; (ii) authorizing the Monitor to distribute the pre-closing Medco receivables to Canadian Imperial Bank of Commerce ("**CIBC**"); and (iii) granting the Monitor the costs of the motion to be paid forthwith by BC Ltd. to the Monitor, was heard this day at the Law Courts Building at 408 York Avenue, in the City of Winnipeg, Manitoba.

ON READING the Eighth Report of the Monitor dated April 22, 2024 (the "**Eighth Report**"), and on hearing the submissions of counsel for the Monitor, the Applicants, CIBC, and the Purchaser, no one else appearing for any other person on the service list, although properly served as appears from the affidavit of service of Shelby Braun affirmed April 23, 2024; all filed:

SERVICE

1. THIS COURT ORDERS that the time for service of the Monitor's notice of motion and supporting materials is hereby abridged and validated so that the motion is properly returnable today and hereby dispenses with further service thereof.

DIRECTION TO PAY

2. THIS COURT ORDERS AND DECLARES that the Purchaser:

- (a) is in contempt of paragraph 7 of the Order (Enhancing the Monitor's Powers) of the Honourable Justice Chartier dated November 24, 2023 (the "**Enhanced Powers Order**") for failing to deliver the \$757,126.65 of Medco's accounts receivable (the "**Pre-Closing Receivables**") to the Monitor upon the Monitor's request, as detailed in the Eighth Report; and
- (b) shall pay the sum of \$757,126.65 (plus interest in the amount of \$14,105.37) for a total of \$771,232.02 (the "**Restitution**") to Medco (care of the Monitor) forthwith as restitution for the Pre-Closing Receivables and to purge BC Ltd.'s contempt of the Enhanced Powers Order.

3. THIS COURT ORDERS that the Monitor shall have the costs of this motion on a solicitor-client basis, which are hereby assessed at \$27,702.50, and shall be paid forthwith by the Purchaser to Medco (care of the Monitor).

DISTRIBUTION

4. THIS COURT ORDERS that the Monitor shall be authorized and directed to forthwith distribute the Restitution and the costs awarded pursuant to this Order to CIBC.

MISCELLANEOUS MATTERS

5. THIS COURT ORDERS that the Monitor hereby be granted leave to make any further motion(s) for advice and directions as may be required to give effect to this Order.

_____, 2024

CHARTIER, J.

I, Craig Frith, of the firm of McDougall Gauley LLP, hereby certify that I have received the consents as to form of the following parties:

SCHEDULE "B"

File No. CI 22-01-38613

THE KING'S BENCH
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SERVICE

1. THIS COURT ORDERS that the time for service of the Monitor's notice of motion and supporting materials is hereby abridged and validated so that the motion is properly returnable today and hereby dispenses with further service thereof.

STAY EXTENSION

2. THIS COURT ORDERS that the Stay Period (as defined in the Amended and Restated Initial Order of the Honourable Justice Kroft dated December 1, 2022 (the "**ARIO**")) is hereby extended until the earlier of July 5, 2024 or the date upon which the Monitor files a Monitor's Certificate substantially in the form attached as Schedule "A" to this Order (the "**Monitor's Certificate**").

CHARGES

3. THIS COURT ORDERS that the DIP Lender's Charge, the Directors' Charge, and the KERP Charge (as defined in the ARIO) are hereby discharged, released, and terminated.

DISTRIBUTIONS

4. THIS COURT ORDERS that the Monitor shall be authorized and directed to retain a holdback in the amount of \$550,000 (the "**Monitor's Holdback**") from the net proceeds of the Medco Transaction (as defined in the Approval and Vesting Order – 1439573 B.C. Ltd. of the Honourable Justice Chartier dated November 24, 2023) and the Realco Transaction (as defined in the Approval and Vesting Order – HSCF Property Inc. of the Honourable Justice Chartier dated November 24, 2023), as well as any other funds realized from the Applicants' estates (collectively, the "**Net Proceeds**"), on account of further fees and disbursements of the Monitor and its legal counsel, the Applicants' potential GST liability, and other costs identified in the Eighth Report, and apply from time to time the

amounts so held against such further fees and disbursements (without the requirement of taxation or passing of accounts) and the other costs identified in the Eighth Report.

5. THIS COURT ORDERS that the Monitor shall be directed and authorized to make the following distributions to CIBC:

- (a) first, from the Net Proceeds, the sum of \$578,000 shall immediately paid to CIBC; and
- (b) second, the entirety of any residual amounts left over from the Monitor's Holdback after the payment of the Monitor and its legal counsel's final invoices and other costs identified in the Eighth Report.

APPROVALS

6. THIS COURT ORDERS that the Eighth Report and the Monitor's activities, actions, and conduct described therein are hereby approved.

7. THIS COURT ORDERS that the professional fees and disbursements of the Monitor, its legal counsel, McDougall Gauley LLP, and the Applicants' legal counsel, Taylor McCaffrey LLP, as set out in the Eighth Report, are hereby approved.

TERMINATION OF THE CCAA

8. THIS COURT ORDERS that upon payment of the amounts set out in paragraph 5 of this Order and the filing of the Monitor's Certificate substantially in the form as attached as Schedule "A" hereto confirming that the administration of the within proceedings has been completed to the Monitor's satisfaction:

- (a) the Administration Charge (as defined in the ARIO) shall be discharged, terminated, and released;
- (b) the within proceedings shall be terminated without any other act or formality, save and except as provided in this Order; provided, however,

that nothing in this Order affects the validity of any Orders made in these proceedings or any actions or steps taken by any Person;

- (c) the Monitor shall be discharged as Monitor of the Applicants; provided, however, that notwithstanding its discharge herein:
 - (i) the Monitor shall remain Monitor for the performance of such incidental duties as may be required to complete the administration of the proceedings herein; and
 - (ii) the Monitor shall continue to have the benefit of the provisions of all Orders made in this proceeding, including all approvals, protections and stays of proceedings in favour of Alvarez & Marsal Canada Inc. in its capacity as Monitor.

RELEASES

9. THIS COURT ORDERS that once the Monitor's Certificate is filed:

- (a) the Monitor, its counsel, McDougall Gauley LLP, the Applicants' counsel, Taylor McCaffrey LLP, CIBC, and CIBC's counsel, MLT Aikins LLP, and their respective, directors, officers, shareholders, partners, employees, agents, executors, successors, administrators, and assigns (collectively, the "**Released Parties**") shall be released and discharged from any and all liabilities they now have or may have by reason of, or in any way arising out of, their acts or omissions in relation to these proceedings, save and except for liabilities arising from the Released Parties' gross negligence or willful misconduct; and
- (b) no action or other proceeding shall be commenced against the Released Parties, except with prior leave of this court on notice to the applicable Released Parties.

MISCELLANEOUS MATTERS

10. THIS COURT HEREBY REQUESTS the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States to give effect to this Order and to assist the Applicants, the Monitor and their agents in carrying out the terms of this Order.

11. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Applicants or the Monitor, as an officer of this Court, as may be necessary or desirable to give effect to this Order or to assist the Applicants, the Monitor and their agents in carrying out the terms of this Order.

_____, 2024

CHARTIER J.

Schedule A – Form of Monitor's Certificate

File No. CI 22-01-38613

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APPLICATION UNDER: THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C., c. C-36, AS AMENDED

MONITOR'S CERTIFICATE

RECITALS

A. Pursuant to an Order of the Honourable Mr. Justice Kroft of the Manitoba Court of King's Bench (the "**Court**") dated December 1, 2022, Alvarez & Marsal Canada Inc. was appointed as the Monitor (the "**Monitor**") of Manitoba Clinic Medical Corporation and The Manitoba Clinic Holding Co. Ltd. (collectively, the "**Applicants**").

B. Pursuant to an Order of the Honourable Mr. Justice Chartier of the Court dated April 29, 2024, the Court approved the Monitor's discharge, to be effective upon the filing by the Monitor with the Court of a Monitor's Certificate confirming the administration of the within proceedings has been completed to the Monitor's satisfaction.

THE MONITOR CERTIFIES that:

1. The administration of the within proceedings has been completed to the Monitor's satisfaction.

**Alvarez & Marsal Canada Inc., in its capacity as
Monitor of Manitoba Clinic Medical Corporation
and The Manitoba Clinic Holding Co. Ltd., and
not in its personal or corporate capacity**

Per: _____
Name:
Title: